

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION

CYNTHIA B. AVENS,

Plaintiff,

v.

FARIS C. DIXON, JR., District
Attorney; VIDENT/ECU HEALTH
MEDICAL CENTER DR. KAREN
KELLY, Medical Examiner;
JOHN/JANE DOE; JOHN/JANE DOE;
JOHN/JANE DOE,

Defendants.

Civil Action No. 4:24-cv-00051-M-RN

**DEFENDANTS' JOINT MOTION TO CONTINUE RULE 26(f) CONFERENCE
and POSTPONE ENTRY OF RULE 16(b) SCHEDULING ORDER**

NOW COME Defendants Faris C. Dixon, District Attorney for the 3rd Prosecutorial District of the State of North Carolina (“**DA Dixon**”); Pitt County Memorial Hospital, Inc. (“**ECU Health**”); Karen Kelly, medical examiner (“**Dr. Kelly**”) at the Regional Autopsy Center in Greenville, North Carolina (collectively, “**Defendants**”), by and through their undersigned counsel, and move the Court to continue the deadline for the Rule 26(f) conference and to postpone entry of a scheduling order under Rule 16(b) of the Federal Rules of Civil Procedure until after Defendants’ Motions to Dismiss have been resolved by the Court. In support of this Motion, Defendants show the Court as follows:

1. Plaintiff Cynthia Avens (“Plaintiff” or “Ms. Avens”) initiated this action on March 22, 2024 against Defendants seeking redress for violations of constitutional

rights. (DE 1 p. 1-2)¹

2. On May 29, DA Dixon filed his Motion to Dismiss the Complaint and Memorandum in Support (DE 24, 25) asserting the Court lacks subject matter jurisdiction over this matter and failure to state a claim upon which relief can be granted, which if granted, would protect DA Dixon from the burdens of litigation, including the Rule 26(f) Conference and pre-trial discovery.

3. On May 29, ECU Health filed its signed Motion to Dismiss the Complaint and Memorandum in Support (DE 22, 23) for failure to state a claim upon which relief can be granted, which if granted, would protect ECU Health from the burdens of litigation, including the Rule 26(f) Conference and pre-trial discovery.

4. On May 29, Dr. Kelly filed her signed Motion to Dismiss the Complaint and Memorandum in Support (DE 26, 27) for failure to state a claim upon which relief can be granted, which if granted, would protect Dr. Kelly from the burdens of litigation, including the Rule 26(f) Conference and pre-trial discovery.

5. On May 30, 2024, this Court entered an Order for Discovery Plan requiring the parties to conduct a Rule 26(f) conference by June 29, 2024. (DE 29)

6. Defendants submit that good cause exists, and it would be in the best interests of the parties and judicial economy for the Court to continue the deadline for the Rule 26(f) conference and to postpone entry of a Scheduling Order pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, as well as initial disclosures and discovery, until after the Court rules upon the Defendants' Motions to Dismiss,

¹ Citations to Plaintiff's Complaint will refer to the docket entry number (DE 1), page number and paragraph number, if applicable.

including any opposition to Defendants' Motions to Dismiss which have been or may be filed by Plaintiff. If said Motions are granted, then this action will be dismissed thereby rendering the Rule 26(f) conference, Rule 16(b) scheduling order, initial disclosures, and discovery unnecessary.

7. Plaintiff has informed counsel for Defendants that she does not consent to this Motion.

WHEREFORE, for the foregoing reasons, Defendants respectfully request that the Court continue the deadline for the parties to conduct a Rule 26(f) conference and postpone entry of a scheduling order under Rule 16(b), the deadline for Rule 26(a) initial disclosures, and all discovery in this action until after the Court has an opportunity to rule upon Defendants' Motions to Dismiss, including any opposition to Defendants' Motions to Dismiss which have been or may be filed by Plaintiff.

Respectfully submitted, this the 3rd day of June, 2024.

JOSHUA H. STEIN
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day electronically filed the **DEFENDANTS' JOINT MOTION TO CONTINUE RULE 26(f) CONFERENCE and POSTPONE ENTRY OF RULE 16(b) SCHEDULING ORDER** using the CM/ECF system, which will send notification of such filing to all the counsel of record for the parties who participate in the CM/ECF system and addressed to the following individuals:

*Cynthia B. Avens
303 Riverside Trl.
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This the 3rd day of June, 2024.

/s/ Chris D. Agosto Carreiro
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N.C. Department of Justice